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April 14, 2005

Mr. Victor Mendez, Director
Arizona Department of Transportation
206 South 17th Avenue, MD101A
Phoenix, AZ 85007

RE: Audits and competitive bidding for railroad safety projects
Docket No. RR-00000B-03-0721

Dear Victor:

As you know, the Arizona Corporation Commission approves new railroad safety construction projects, including the implementation of upgraded crossings, warning lights and gates. In the past two years, the ACC has urged that the pace of these improvements be stepped up in high-traffic areas such as Chandler.

While we approve these projects, the money for them is funneled directly from the Federal Highway Administration, through the Arizona Department of Transportation, to railroads such as BNSF and Union Pacific.

It has come to my attention that the expenditure of some of these funds goes unaudited by the state, and the projects are not subject to a competitive bidding process. The cost of putting in new flashing lights or crossing gates is determined by the railroads, and the railroads bill ADOT directly for the safety improvement work they do.

More specifically, as was related to me by your auditing division, railroad safety projects that exceed \$500,000 are automatically audited by ADOT. By contrast only a sampling of projects that cost less than \$500,000 are audited. In the past four years, about half of the roughly 160 railroad safety projects conducted by the railroads and paid for by the federal government through the state were audited. For those audits that are conducted by ADOT, some are done through field visits, and others are so-called "desk audits", in which paperwork is submitted to ADOT by a railroad to demonstrate the propriety of their spending. Some audits are done by outside Certified Public Accountants, and others are performed by in-house ADOT inspectors.

The ACC's Railroad Safety Division does examine these projects to ensure that the railroads are building the projects and implementing them as called for by the Commission's orders. But no one audits half of the railroad safety projects to determine whether the state is being overcharged or whether they could be constructed properly at a lower cost. Nor does ADOT mandate that

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they be awarded in a competitive bidding process. Though our Railroad Safety Division has long supported competitive bidding, it is my understanding that the railroads have objected.

We have a duty to ensure that the approximately \$1.5 million spent each year on these railroad upgrades is being spent appropriately. Over billing could be preventing the state from implementing additional safety improvements to our railroads with the money we are provided by the FHA.

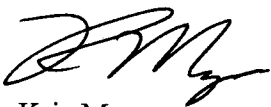
Other states are beginning to ask similar questions about their railroad safety improvement projects. According to a recent *New York Times* story, Missouri conducted an audit that revealed that two railroads had overcharged several projects by more than 100 percent. In Louisiana, an investigation uncovered overcharges of 10 percent, worth more than \$1 million.

I am writing to urge ADOT to engage in a discussion with the Commission about possibly expanding the number of railroad safety projects that are audited, and whether the state should begin to put these projects out for competitive bid. I believe that we should at a minimum put these projects out to competitive bid and work to increase the number of projects that undergo audits.

The recent death of a young NAU college student and the injury of another at a railroad crossing in Flagstaff only underscore the importance of railroad safety efforts. We should do everything in our power to ensure that the resources Arizona receives for railroad safety are maximized and properly spent.

Thank you for your attention to this matter and for the assistance of your very able staff in answering questions on these issues.

Sincerely,



Kris Mayes
Commissioner

Cc: Chairman Jeff Hatch-Miller
Commissioner William A. Mundell
Commissioner Marc Spitzer
Commissioner Mike Gleason
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Brian McNeil
Heather Murphy
Gail Howard